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EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

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DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/820,834

Applicant(s)

LAPOINTE ET AL.

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 June 2002 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### *Drawings*

The specification appears to describe a socket member 28 inserted within a sleeve 26 with a post segment 20 attached to the sleeve 26 in abutting relationship via a connector 24 with the connector 24 being inserted within the socket member 28. However, Figure 2 of the instant drawings appears to show the socket member 28 inserted within a member 42 which member 42 appears to possess the trailing end 36 of the socket member 28, see specification), while the post segment 20 appears to be one and the same with the member 42. And, trailing ends 30 and 34 of the sleeve and socket member do not appear flush in Fig. 2. Correction is required.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 18, 2002 have been disapproved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

The proposed drawing correction of June 18, 2002 appears <sup>to</sup> have reference numeral 34 directed to a section which is intermediate of the ends of "post segment" 20. And, reference numeral 42 appears to be directed to the "socket", not a connector as recited within the instant specification. The proposed drawing correction of June 18, 2002 still does not show an upper end of the "socket member" flush with the trailing end of the "outer sleeve".

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-18, 21, and 22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide support for and the originally filed disclosure does not appear to have presented any provision for "...for allowing said socket member to move deeper into said outer sleeve in the event that an obstacle is encountered while said footing is being driven into the ground".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-18, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of claims 1, 10, and 21 recite "said leading end of said outer sleeve extending beyond said socket member for allowing said socket member to move deeper into said outer sleeve in the event that an obstacle is encountered while said footing is being driven into the ground" when it is not apparent from the specification as to how such would take effect. The instant disclosure fails to describe how the socket would move within the outer sleeve and fails

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to specify how such motion would take effect by having the leading end of the outer sleeve extending beyond the socket member.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 10, 11, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall et al. Hall et al. shows, Figs. 2, 3 and 5, footing comprised of outer sleeve 12, socket member 17 press fitted therein, with elongated post segment 20, and connector 18 inserted into the elongated post segment and the socket member for joining the post segment to the footing. Outer sleeve is flattened as can be seen at tip thereof for easy insertion into the ground. Stabilizer 27 is removably fitted over the outer sleeve.

6. Claims 10, 11, 14, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brownell. Brownell shows, Figs. 1, 4 and 5, footing comprised of outer sleeve 22, socket

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member 22a press fitted therein, with elongated post segment, (tubular swing leg), and connector 16 inserted into the elongated post segment and the socket member, (as by way of opening 15), for joining the post segment to the footing. Outer sleeve is flattened as can be seen at tip thereof for easy insertion into the ground. Footing is inserted into the ground with socket member 22a attached to outer sleeve 22.

7. Claims 10, 11, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Aberle. Aberle shows, Figs. 1 and 2, footing comprised of outer sleeve 30, socket member 12 press fitted therein, with elongated post segment 16 and connector 58 axially inserted into the socket member with above ground post segment thereover. Footing is inserted into the ground with socket member 22a attached to outer sleeve 22.

8. Claims 10, 11, 12, 14, and 19 are rejected under 35 U.S.C. 102(a) as being anticipated by Krinner Krinner shows, Fig. 7, footing comprised of outer sleeve 6, socket member 16/18 press fitted therein. An upper end of the socket member 16/18 being leveled with a trailing end of the outer sleeve 6. Outer sleeve is flattened as can be seen at tip 12 for easy insertion into the ground. Footing is inserted into the ground with socket member 22a attached to outer sleeve 22.

9. Claims 10, 11, 14, 15, 16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Connors. Connors shows, Figs. 1 and 2, footing comprised of outer sleeve  $\frac{1}{2}$ , socket member

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8 press fitted therein. Outer sleeve is flattened as can be seen at tip thereof for easy insertion into the ground. Stabilizer 20 is removably fitted over the outer sleeve. Footing is inserted into the ground with socket member 8 attached to outer sleeve 1/2. Outer sleeve 1/2 can be seen as having a square cross section with the socket 8 possessing an elliptical cross section.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al.

To have formed the Hall et al. components 12 or 17 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brownell.

To have formed the Brownell components 22 or 22a of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including

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interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle.

To have formed the Aberle components 30 or 12 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

14. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Connors.

To have formed the Connors components  $\frac{1}{2}$  or 8 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

### ***Response to Arguments***

15. Applicant's arguments filed June 18, 2002 have been fully considered but they are not persuasive. Applicant argues that Hall et al. does not show any means for protecting the lower shaft 12 against deformation while being driven into the ground. However, it is not seen where the claim language recites any language directed to protecting the "outer sleeve" member.



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Otherwise, Hall et al., (as well as each of Brownell, Aberle, Krinner, and Conners), presents the elements recited in the claims rejected thereunder. And, as for Applicant's argument to "protecting a socket member against deformation, while being driven into the ground...", such appears directed to method of installation which would not serve to carry any weight in a claim directed to an article of manufacture. As expressed above, and as set forth in the respectively applied rejections, Hall et al. as well as each of Brownell, Aberle, Krinner, and Conners disclose the elements and relationship of elements recited in the respectively rejected claims.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to read 'M. Safavi', with a stylized flourish at the end.

**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
August 25, 2002